

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #1	CCRB Case #: 201903132	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/11/2017 7:00 PM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 8/11/2018	EO SOL 8/11/2018	
Date/Time CV Reported Tue, 04/02/2019 9:30 AM	CV Reported At: IAB	How CV Reported: Social Media	Date/Time Received at CCRB Thu, 04/11/2019 11:08 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Gomez	27475	953916	052 PCT
2. SGT Charles Cavallaro	04758	938197	052 PCT
3. POM Jose Santiago	30357	932215	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joel Ayala	08262	954509	052 PCT
2. POM James Tobin	04354	951340	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro entered § 87(2)(b) in the Bronx.	[REDACTED]
B.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro searched § 87(2)(b) in the Bronx.	[REDACTED]
C.POM Jose Santiago	Discourtesy: Police Officer Jose Santiago spoke discourteously to § 87(2)(b)	[REDACTED]
D.POM Jose Santiago	Abuse: Police Officer Jose Santiago threatened § 87(2)(b) s dog with the use of force.	[REDACTED]
E.POM Jose Santiago	Off. Language: Police Officer Jose Santiago made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

### Case Summary

Detective William Arata from IAB filed the following complaint on behalf of § 87(2)(b) on April 2, 2019. Det. Arata generated the complaint after he saw a New York Daily News article (Board Review 01) about this incident featuring § 87(2)(b) and his attorney, § 87(2)(b). The complaint was received at the CCRB on April 11, 2019. The complaint was filed two years after the incident date.

On February 11, 2017, PO Jose Santiago, PO Joel Ayala, PO Juan Gomez, PO James Tobin, and Sgt. Charles Cavallaro from the 52<sup>nd</sup> Precinct arrived at § 87(2)(b) in the Bronx. Sgt. Cavallaro entered and searched of the § 87(2)(b)'s apartment (**Allegations A and B - Abuse of Authority: § 87(2)(g)**) and officers found a semi-automatic rifle and a sawed-off shotgun (Board Review 02). Once inside, PO Santiago allegedly told § 87(2)(b) "Do me a favor and shut that fucking dog up before I shoot that shit in the face." and called her a "bitch" several times (**Allegation C – Discourtesy: § 87(2)(g)**) (**Allegation D – Abuse of Authority: § 87(2)(g)**) (**Allegation E – Offensive Language: § 87(2)(g)**). § 87(2)(b) was arrested for possession of a loaded firearm and possession of a weapon (Board Review 03). § 87(4-b), § 87(2)(g)

This case was deemed sensitive due to New York Daily News coverage.

Surveillance footage from the building was obtained for this case (Board Review 04, 05). The officers involved did not have body worn cameras at the time of this incident.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Charles Cavallaro entered § 87(2)(b) in the Bronx.**

**Allegation (B) Abuse of Authority: Sergeant Charles Cavallaro searched § 87(2)(b) in the Bronx.**

It is undisputed that the officers were looking for guns at § 87(2)(b)'s apartment based on information they received from an earlier arrest. It is also undisputed that the officers did not have a warrant to search the apartment, but § 87(2)(b) signed a consent to search form at some point during the incident.

At the time of the interview, § 87(2)(b) did not recall most of the incident and testified based on building surveillance video provided by his private attorney, § 87(2)(b). According to § 87(2)(b) he opened the door to his apartment after hearing a knock at the door. He alleged that an officer, identified through the investigation as PO Juan Gomez, shook his hand and pulled him out of the apartment. Two officers then entered and searched the apartment. PO Gomez explained to § 87(2)(b) that they were looking for a firearm involved in a shooting the night before. One of the officers, identified through the investigation as PO Santiago, came out of the apartment, and told § 87(2)(b) that they found a rifle. PO Santiago asked § 87(2)(b) to sign a consent to search form and he refused. § 87(2)(b) stated that he was informed later by § 87(2)(b) that officers coerced her into signing the consent to search form after the officers searched the apartment. § 87(2)(b) was arrested and informed later that officers also found a sawed-off shotgun in the apartment. § 87(2)(b) admitted to owning the firearms but stated that he got them as a gift. He stated during the interview that the rifle was under the headboard of his bed in the bedroom and the shotgun was in a tennis racket case under a fish tank near the apartment's front door (Board Review 06).

§ 87(2)(b) testified that she heard the doorbell ring and § 87(2)(b) went to open the door but she could not see from the bedroom. She heard the officers say that they were there for a shooting. When she exited the bedroom, she saw an officer, PO Santiago, pulling § 87(2)(b) out of the apartment by the hand. She grabbed § 87(2)(b)'s other hand and described that she had a “tug-of-war” with PO Santiago. § 87(2)(b) referred to PO Santiago as “PO Ayala” during her entire CCRB interview, but later clarified upon watching video that she mixed up the names. § 87(2)(b) stated that she allowed another officer, identified by the investigation as PO Ayala, into the apartment to talk to her since he was nicer to her. PO Santiago rushed past them and straight into the bedroom, closing and locking the door behind him. PO Santiago found a rifle that was under their bed and a shotgun with ammunition that was taped under a fish tank near the front door. Later an officer, who § 87(2)(b) described as either a lieutenant or a captain, told § 87(2)(b) that § 87(2)(b) had signed a paper taking ownership of the guns and that § 87(2)(b) now needed to sign the paper in order to confirm that the weapons were § 87(2)(b). § 87(2)(b) agreed and signed the paper and then the officer informed her that she had consented to a search (Board Review 07).

Sgt. Cavallaro’s memo book notes that § 87(2)(b) signed the consent to search form at 8:00pm and the two firearms were recovered at 8:30pm (Board Review 08). He was the Anti-Crime supervisor on this evening and therefore the allegations are pleaded against him. He recalled that an arrest was made earlier in the day and an informant provided a tip that § 87(2)(b) had guns in his apartment. The SBA representative did not allow Sgt. Cavallaro to disclose additional information about the tip or who provided it except that a description was given of the firearms. Sgt. Cavallaro stated in his CCRB interview that he and the other officers went to the location specifically to look for § 87(2)(b). Sgt. Cavallaro did not make the decision to enter the apartment. He did not know who made the decision to go to § 87(2)(b)'s apartment but recalled that after receiving the description, officers deemed the weapons dangerous and a decision was made to try to get them off the street immediately rather than wait for a warrant. Sgt. Cavallaro did not recall the descriptions of the weapons at the time of the interview.

At the location, Sgt. Cavallaro recalled being allowed into the apartment but did not recall who let him in. He spoke to § 87(2)(b) because he believed it was her apartment. He explained the consent to search form to her and did not recall where § 87(2)(b) was at the time. § 87(2)(b) signed the form with no issue and the remainder of the officers went in. The officers did a quick visual search of the apartment first and an unknown officer found the semi-automatic rifle in the bedroom. An officer that he could not recall, called the Bronx DA’s office with the information on the rifle and inquired if a warrant was necessary. This officer then relayed to Sgt. Cavallaro that they were told that the consent to search was enough. The officers then did a thorough search of the apartment and found a sawed-off shotgun near the front door of the apartment. He denied that any officers searched the apartment prior to § 87(2)(b) signing the form (Board Review 09).

PO Ayala testified that officers from the 52<sup>nd</sup> Precinct made an arrest a few hours earlier and the individual specified that there was a rifle, a shotgun and handguns in the apartment. PO Santiago made the decision to visit § 87(2)(b)'s apartment. At the apartment, PO Ayala spoke to § 87(2)(b) and explained the information they had about firearms. § 87(2)(b) admitted to having firearms in the apartment. § 87(2)(b) invited the officers into the apartment. PO Gomez spoke to § 87(2)(b) about signing a consent to search form and she signed the form. The officers did not search the apartment until after she did so. Within seconds of entering the apartment, PO Ayala saw a rifle leaning against the wall of the bedroom straight ahead and a shotgun against the wall near the door of the apartment, in plain view (Board Review 10). PO Ayala provided a copy of the consent to search form, signed by § 87(2)(b) on February 11, 2017 (no time indicated). PO Gomez is listed as the requesting officer and it was reviewed by Sgt. Cavallaro (Board review 09).

PO Gomez was consistent about the information received by the person arrested earlier but specified that PO Santiago obtained the information. At the apartment, § 87(2)(b) opened the door, officers asked him to step out to talk and he did so. PO Gomez explained the information they received and noted a shooting that recently occurred. § 87(2)(b) admitted to having firearms but stated that he was a hunter and they were not illegal. PO Santiago observed ammunition somewhere in the apartment and communicated that he saw something to PO Gomez by pointing into the apartment. PO Gomez had a consent to search form which he explained to § 87(2)(b) outside of the apartment. He did not recall whether § 87(2)(b) or § 87(2)(b) signed the form but denied that officers searched the apartment prior to the signing of the form (Board Review 16).

Security footage from the building captured the incident from a camera positioned above the door of § 87(2)(b)'s apartment (Board Review 04). At 3:08 of the video, PO Gomez and PO Ayala stand in front of the apartment and § 87(2)(b) steps out. PO Gomez reaches out and shakes § 87(2)(b)'s hand and then pulls him towards him and to the side. § 87(2)(b) is then partially seen stepping out of the apartment at 3:16 of the video. Since the video has no audio, the conversation between officers and § 87(2)(b) and § 87(2)(b) is unknown. Due to the angle of the video camera, the entry is not captured.

People v. Gonzalez, 39 NY2d 122 (1976)(Board Review 18) specifies that an entry based upon consent must be voluntary and absent of coercion.

§ 87(2)(g)  
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**Allegation (C) Discourtesy: Police Officer Jose Santiago spoke discourteously to § 87(2)(b).**

**Allegation (D) Abuse of Authority: Police Officer Jose Santiago threatened § 87(2)(b)'s dog with the use of force.**

**Allegation (E) Offensive Language: Police Officer Jose Santiago made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).**

§ 87(2)(b) alleged that when she was at the doorway, she told PO Santiago that there was no need for officers to enter the apartment. At this time her dog barked inside of the apartment. PO Santiago told § 87(2)(b) "Do me a favor and shut the fuck up," and then said, "do me a favor and shut that fucking dog up before I shoot that shit in the face." § 87(2)(b) yelled that she did not consent to a search and PO Santiago replied, "Shut up bitch, I'm not talking to you." § 87(2)(b) then told PO Santiago that he was acting like a child and he replied, "Well you're acting like a bitch." § 87(2)(b) cried, and PO Santiago told her, "don't cry those fake tears. Before you were acting like a fucking bitch. Like a dog."

The Department Advocates Office confirmed that PO Santiago retired from the NYPD on October 1, 2017. He was therefore not interviewed (Board Review 11).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 13).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 14).
- Sgt. Cavallaro has been a member of service for 14 years and has been the subject in 24 CCRB complaints and 65 allegations, of which 14 were substantiated. § 87(2)(g)
  - CCRB 201607995 involved substantiated allegations of question, vehicle stop, and vehicle search against Sgt. Cavallaro. The board recommended Formalized Training and the NYPD concurred with the findings.
  - CCRB 201703705 involved a substantiated allegation of a question against Sgt. Cavallaro. The board recommended Command Discipline B and the NYPD concurred with the finding.
  - CCRB 201802098 involved substantiated allegations of a frisk, search and a vehicle stop against Sgt. Cavallaro. The board recommended Command Discipline A and the NYPD concurred with the findings.
  - CCRB 201804513 involved substantiated allegations of an entry and search of a premises and a threat of arrest against Sgt. Cavallaro. The board recommended Command Discipline B. The NYPD has not yet come to a determination.
- PO Santiago is no longer a member of service but had been the subject of 15 CCRB complaints and 41 allegations, one of which was substantiated.
  - CCRB 200813545 involved a substantiated allegation of a vehicle stop against PO Santiago. The board recommended instructions and the NYPD concurred with the decision.
- PO Gomez has been a member of service for seven years and has been the subject in 18 CCRB complaints and 39 allegations, none of which were substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of July 9, 2019, § 87(2)(b) stated during his CCRB interview that he did not file a Notice of Claim in regards to this complaint.
- § 87(2)(b)

§ 87(2)(b)

- For this case, § 87(2)(b) pled guilty to Criminal Possession of a Weapon in the 3<sup>rd</sup> Degree and was imprisoned for one year (Board Review 15).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Reviewer: \_\_\_\_\_  
Signature                      Print Title & Name                      Date